5

SUPREME COURT OF THE UNITED STATES.

DECEMBER TERM, 1858.—No. 56.

THE UNITED STATES, PL'FFS IN ERROR,

vs.

THE CITY BANK OF COLUMBUS.

IN ERROR FROM CIRCUIT COURT UNITED STATES FOR THE SOUTHERN DISTRICT OF OHIO.

BRIEF FOR THE UNITED STATES.

J. S. BLACK,
Attorney General.

Digitized by the Internet Archive
in 2018 with funding from
This project is made possible by a grant from the Institute of Museum and Library Services as administered by the Pennsylvania Department of Education through the Office of Commonwealth Libraries

https://archive.org/details/unitedstatespiff00unit

SUPREME COURT OF THE UNITED STATES.

DECEMBER TERM, 1858 —No. 56.

THE UNITED STATES, PL'FFS IN ERROR,

VS.

THE CITY BANK OF COLUMBUS.

FACTS OF THE CASE.

The following paper was presented to Mr. Corwin, Secretary of the Treasury, by Mr. William Miner :

"CITY BANK OF COLUMBUS,
"*Columbus, Ohio, October* 26, 1850.

"SIR: The bearer, Col. William Miner, a director of this bank, is authorized, on behalf of this institution, to make proposals for the purchase of United States stocks to the amount of one hundred thousand dollars; any arrangement he may make will be recognised and fully carried out by this bank. He is also authorized, if consistent with the rules of the Treasury Department, to contract, on behalf of this institution, for the transfer of money from the east to the south or west for the government.

"I have the honor to be, sir, your obedient servant,
"THOS. MOODIE, *Cashier*.

"HON. THOMAS CORWIN,
"*Secretary of the Treasury, Washington City.*"

This is shown to be a genuine paper, and Thos. Moodie to have been the cashier of the bank.

The Secretary did contract with Mr. Miner, as agent of the City Bank of Columbus, to transfer $100,000 from New York to New Orleans, and Miner received a draft on New York for that sum, which was paid to him.

The transfer never having been made, and the money never accounted for, the United States now sues the bank in assumpsit for the amount with interest, &c. The bank does not deny the above stated facts, but shows, in defence, that the president or directors of the bank (except Miner) had no knowledge of the transaction, had never appointed Miner to such an agency, and never knew or sanctioned the writing of said letter. It was shown by plaintiff that the letter was copied into the letter-book of the bank; in reply to which it was shown, that it was not the usage in this bank, or other banks in Ohio, for the directors to inspect the letter-book.

Four gentlemen of experience as bank officers in Ohio were called as witnesses, who unanimously testified that, by the usage and custom of banks, the cashier had no power to create such an agency as this; and on the other hand, that the cashier was the certifying officer of the bank, and that his certificate, as to the actings and doings of the bank, would be received and acted on by others. One of the witnesses, Mr. Bishop, testifies that, in all cases of importance, the cashier ought to copy and certify the resolution of the board.

It was proved by Mr. Moodie, that he did not always enter a meeting of the board on the minute-book, unless important business was transacted; and such was proved to be the usage of some other banks in Ohio..

Upon this state of facts the circuit court held the defendants not liable.

BRIEF.

That the cashier of a bank has no power, of his own motion, to appoint an agent for the bank, may, for the sake of the argument, be conceded.

But here the cashier does not profess to appoint. He officially certifies, that Colonel Miner *is authorized* on behalf of the institution to make the contract.

The statement in the certificate involves the assertion, that whatever was necessary for the creation of such an agency had been done.

And the question is—this certificate of the cashier being false in fact—who shall be the sufferer: the institution who, by constituting him their cashier, had given credit to his official acts, or an innocent party who acts *bona fide* on the faith of the cashier's certificate?

The old doctrine that a corporation can only appoint an agent by corporate seal, has long since been exploded.

In Bank of Columbia *vs.* Patterson's Adr., (7 Cranch, 305,) Story, J., says: "They might by mere vote or other corporate act, not under their corporate seal, appoint an agent, whose acts and contracts within the scope of his authority would be binding on the corporation."

And in Perkins *vs.* Washington Ins. Co., (4 Cowen, 659,) Colden, Senator, says: "I believe it is now perfectly well settled, that a person may become the agent of a corporation, as he may of an individual, without deed or other writing."

And in Burrill *vs.* Nahant Bank, (2 Metcalf, 163,) it was held, that a vote of the directors was sufficient to constitue two of their number agents for the bank, even to convey real estate under seal.

It will not be disputed as a general proposition, that the directors of a bank have power to appoint agents to do acts, and to make contracts on behalf of the bank.

This rule is liable to this exception, that where the charter requires that anything be done by the directors themselves, or by any other named officer, the directors cannot commit *that* to any other. But this case does not come within the exception.

The words of the charter are very broad:

"The affairs of every bank formed and organized to carry on the business of banking under the provisions of this act, shall be managed

by not less than five nor more than nine directors." (Sec. 49, Gen'l Bank Act, Swan's Rev. Statutes of Ohio, p. 95.)

The law being so, the next question is, in what way may the appointment of an agent for a bank be certified to the world, so that persons outside may safely deal with him as agent.

Our proposition is, that the written statement of the cashier, that he is such agent, is sufficient. Judge Story, Agency, sec. 114, lays down the general proposition, "that the officers of a bank are held out to the public as having authority to act according to the general usage, practice, and course of business of such institutions, and that their acts within the scope of such usage, practice, and course of business, bind the bank in favor of third persons having no knowledge to the contrary."

Now it is abundantly shown in this case, that in Ohio (as we know to be the fact universally) the usage of banks is, that the cashier acts not merely as the custodian of the funds, and general executive officer, but also as the secretary and keeper of the minutes of the directors, and that he is the proper officer to certify the actings and doings of the board and the corporation. This evidence is wholly uncontradicted, and must be taken as true.

If, then, it is within the scope of the ordinary duties of this cashier to certify what had been done by the bank, and if the bank is bound to third parties, having no knowledge to the contrary, by the act of the cashier within the scope of his duties, then it follows that such third parties had a right to consider the statement of the cashier that Miner was the agent, as proof that he was so; and the bank is bound by the act of Miner as agent.

The argument may be plainly stated thus: If the board of directors had, in fact, appointed Mr. Miner to this agency, how would the Secretary of the Treasury have been informed of that appointment?

All the witnesses answer, that, by the usage of banks, he would have been informed by the certificate of the cashier.

Then the Secretary had a right to treat that certificate as sufficient, and is not bound to look into its truth.

In Mechanics' Bank *vs.* Bank of Columbia, (5 Wheaton, 337,) speaking in reference to the cashier of a bank, the court say:

"But in the diversified exercise of the duties of a general agent the liability of the principal depends on the facts:

"1st. That the act was done in the exercise; and,

"2d Within the limits of the powers delegated."

This act of the cashier is both.

The only effort to break the force of this reasoning, by testimony, is the evidence of Samuel P. Bishop, (page 12 Record,) who, being asked "if the resolution of the board creating such power ought not to be copied and certified," replied that, "in his opinion, it ought, in all cases of importance."

But this witness does not state that such was the usage; on the contrary, he, as well as every other witness, says, in reference to this very paper, that it would be relied on as true.

But apart from this evidence, is there any soundess in the distinction?

If it were true that the appointment of an agent by a corporation must be evidenced by an entry on the minutes, or by any other writing, then it might plausibly be urged that the cashier or other certifying officer has only the power of certifying to a copy of such record or writing. But there is no such rule of law.

In the Bank of the United States *vs.* Dandridge, (12 Wheaton, 64,) it was distinctly decided by this court that the acts of a corporation, *though not reduced to writing*, are valid and binding, and may be proved *aliunde*. It is true that this doctrine did not command the assent of Chief Justice Marshall, who, in an able dissenting opinion, maintained the contrary; but it is now well established law. (See Angell and Ames on Corp., sec. 284; Conro *vs.* Port Henry Iron Company, 12 Barbour Sup. Ct. Reps., 53; Burgess *vs.* Pue, 2 Gill, p. 287; Richardson *vs.* St. Joseph Iron Company, 5 Blackford, 148; Badger *vs.* Bank of Cumberland, 26 Maine, 435; Elysville Manufacturing Company *vs.* Okisko Company, 1 Md. Chy. Dec., 398.)

These authorities conclusively establish that, unless the charter provides otherwise, (as in this case it does not,) the appointment of an agent need not be in writing, or entered upon the minutes; but may be by parol, and provable like other facts.

But if this be so, there is no foundation for the assumption, that the cashier can only certify the agency by copying the record of the appointment, for *non constat* that there is any record. And no custom of this bank is shown to the contrary. Even if it had been, it could have no effect, unless the Secretary of the Treasury had notice of it; but, in fact, the cashier testifies that meetings of the board were held *not* entered on the minutes. (Page 12 Record.)

We have thus far shown—1st. That the directors had the power to appoint an agent to make this contract on behalf of the bank; 2d. That the appointment of such agent need not be entered on the minutes, or reduced to writing; 3d. That the cashier is the proper officer to certify the fact of such appointment.

But the act of the cashier, within the scope of his dutes, is the act of the bank. (Badger *vs.* Cumberland, 26 Maine, 435; Story Agency, sec. 114; Angell and Ames Corp., sec. 300.)

It matters not that the thing certified was not true in fact. A principal is bound by the false and fraudulent representations of his agent in the scope of his authority. (Story Agency, sec. 139; ib., sec. 452.)

The next proposition is, that the bank having, through their cashier, asserted that Mr. Miner was agent, and the Secretary of the Treasury having acted on that information, the bank is now estopped to deny it.

The doctrine of estoppel *in pais* is thus distinctly stated by Lord Denman in Pickard *vs.* Sears: (6 Ad. and Ellis, 469; 33 E. C. L. Reps., 117.)

"But the rule of law is clear that where one, by his words or conduct, wilfully causes another to believe the existence of a certain state of things, and induces him to act on that belief, so as to alter his own previous position, the former is concluded from averring, against the latter, a different state of things as existing at the same time."

This doctrine is recognised by all courts of the common law. (See Brown *vs.* Wheeler, 17 Conn., 353 ; Carpenter *vs.* Stillwell, 12 Barbour Sup. Ct. Reps., 136.)

This doctrine applies to corporations as fully as to individuals. (Angell and Ames on Corp., sec. 238, p. 232.)

In Lovett *vs.* German Reformed Church, (12 Barbour Sup. Ct. Reps., 81,) the court held the corporation estopped by the acts of acting trustees, though not rightfully in office.

In Bank of Genesce *vs.* Patchin Bank, (3 Kernan's Reps., N. Y., p. 317,) the same doctrine is recognised.

But a corporation can do acts, or make declarations, in no other way than through its officers and agents. Therefore, a corporation will be estopped by the acts or declarations of its officer or agent, acting in the sphere of his authority, in all cases where an individual would be estopped by his own.

Applying the above rules to this case, we find every ingredient mentioned by Lord Denman as required to make an estoppel.

This bank, through the written certificate of their cashier, he being the officer empowered by the usage of banks to certify its doings, has wilfully caused the Secretary of the Treasury to believe, that Miner was authorized by the bank to contract for the transfer of funds. The Secretary was thereby induced to act on that belief, and to place in the hands of said Miner $100,000, to be transferred to New Orleans. The bank is, therefore, *concluded* from averring that Miner was not at that time its agent.

The case is, therefore, with the plaintiff upon the law.

I ask, in the words of the supreme court of Maine, in Frankford Bank *vs.* Johnson, (24 Maine Reps., 503,) "And why should a corporation, or its stockholders, be permitted to select unfaithful agents or directors, who, in the exercise of the powers conferred on them, in making contracts or settlements with innocent persons, commit frauds upon the corporation, and then claim to be relieved from the effect of those contracts and settlements, and the consequences of their own conduct in the selection of such agents, and to throw losses, or any part of them, upon the innocent parties, instead of being required to abide by them, and left to obtain redress from their own fraudulent agents? Are corporate bodies so favored by the law, as to be held irresponsible for the misconduct of agents of their own selection, while the innocent with whom they transact business are to be made to suffer the losses occasioned by it?"

And we ask if any one is to bear a loss arising from the misrepresentation of a fact by this cashier, in the line of his official power, who shall bear the loss—the corporation who appointed him to that responsible situation, or innocent parties who act on the faith of his official statement?

Perhaps the question may be asked, if it is admitted that the cashier cannot himself appoint an agent, does he not virtually exercise that power by certifying that one is the agent? The answer is plain. In appointing an agent the cashier exercises discretion, judgment, choice. It may well be said that such powers belong only to the directors. But in certifying to a man's authority as agent the

cashier needs no quality but *truth*. And that the corporation warrant him to possess, by offering him to the public as their certifying officer.

Justice, therefore, requires that this loss be borne by the bank and not by the government.

It may possibly be suggested that estoppels must be mutual and reciprocal, and that, as the government of the United States is not subject to be estopped, it cannot take advantage of an estoppel. The doctrine of mutuality in estoppels will be found, on examination, to apply to technical estoppels by *deed* or *record;* and the only meaning of the maxim is, that none but parties to the deed or record, or their privies—in other words, those bound by it—can avail themselves of it.

But the maxim does not apply to an estoppel *in pais*, which, in truth, should not be called an estoppel, but a rule of equity of the highest morality, and only applied when fraud and injustice is to be prevented. No case can be found in which the maxim of mutuality has been applied to such a transaction, as, indeed, it cannot apply. If the government has been held not estopped by the frauds of its agents, it is from reasons of State policy, and founded on the assumption that the government will not do injustice. But to hold from that that individuals or corporations shall be permitted to defraud the government would be a non-sequitur.

In Bruce *vs.* United States, (17 Howard, 442,) this court applied the doctrine in favor of the United States.

APPENDIX.

MR. CUSHING'S BRIEF.

SUPREME COURT OF THE UNITED STATES.

DECEMBER TERM, 1856.—No. 59.

THE UNITED STATES, PLAINTIFFS,

vs.

THE CITY BANK OF COLUMBUS.

ON A CERTIFICATE OF DIVISION OF OPINION BETWEEN THE JUDGES OF THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF OHIO.

This is an action of assumpsit. The declaration contains two counts: one upon a special contract made by the defendants to transfer from the assistant treasurer in New York to the assistant in New Orleans; and the other for money had and received.

The defendants plead the general issue.

On the trial the plaintiffs put in evidence the following papers:

"CITY BANK OF COLUMBUS,
"*Columbus, Ohio, October* 26, 1850.

"SIR: The bearer, Colonel William Minor, a director of this bank, is authorized, in behalf of this institution, to make proposals for the purchase of United States stocks to the amount of one hundred thousand dollars. Any arrangement he may make will be recognised and fully carried out by this bank. He is also authorized, if consistent with the rules of the Treasury Department, to contract in behalf of this institution for the transfer of money from the east to the south or west for the government.

"I have the honor to be, sir, your obedient servant,
"THOMAS MOODIE, *Cashier*.

"Hon. THOMAS CORWIN,
"*Secretary of the Treasury, Washington City.*

"WASHINGTON CITY, *November* 1, 1850.

"This will certify that I have contracted with the United States Treasury, as the agent of the City Bank of Columbus, to transfer $100,000 from New York to New Orleans, to be deposited in the treasury at the latter named city by the first day of January, 1851, free of charge. I have, in pursuance of said contract, this day received a draft in my own name for $100,000 on the United States Treasury at New York city, which is to be accounted for on said contract.

"WM. MINOR."

Upon the production of these papers, and proof of their execution, and further proof that said letter was the act of said cashier alone, without the knowledge or sanction of the directory of said bank, before or at the time of, or subsequent thereto, but was copied in the letter-book of the said bank at the time of its execution, a question arose upon the validity thereof.

Upon this question the judges were divided in opinion.

The case thus presented concedes the following propositions:

1. That the United States had power to enter into the contract.
2. That the contract was actually made by Minor.
3 That Minor, acting under said letter of the cashier, actually received the draft of the United States on the assistant treasurer at New York, and obtained the money upon it.
4. That the bank has not repaid said money to the United States by depositing in New Orleans or elsewhere.

The whole case is reduced to the single question, whether the act of the cashier in making his said certificate is binding upon the bank?

The plaintiffs will maintain that:

THE ACT OF THE CASHIER IS BINDING UPON THE BANK.

I. The bank had the power, under the laws of Ohio, to enter into the contract as made.

The powers of banks in Ohio will be found in the general banking law of the 24th February, 1845, (Swan's R. L. of Ohio, p. 96, sec. 51,) which, among other things, provides:

"Every banking company authorized to carry on the business of banking under the provisions of this act * * shall be held and adjudged to be a body corporate, with succession * * and by its corporate name shall be competent to contract, prosecute, and defend suits and actions of every description as fully as natural persons; and process against such company may be served on its president or cashier. * * Each of said banking companies shall * * * have power to loan money, *buy, sell, and discount bills of exchange, notes, and all other written evidences of debt*, except such as it shall by this act be prohibited from buying, selling, or discounting; receive deposits; *buy and sell gold and silver coin and bullion; collect and pay over money, and transact all other business properly appertaining to banking; subject, however, to the provisions and restrictions contained in this act.*

These provisions authorize the most extensive banking operations.

1. The bank can buy, sell, and discount bills of exchange. The

draft by the Treasury Department was a bill of exchange, which it bought.

The record shows that Minor, as the agent of the bank, received a draft for $100,000 on the United States Treasury at New York, which, it is conceded, was paid. A draft or bill of exchange is defined to be "a letter, clothed in certain terms, prescribed by the laws, whereby you order your correspondent in another place to pay to me, or to another person having my order, a certain sum of money, in exchange for a sum of money, or of the value of what you have here received of me, either in fact or in account. In this sense a bill of exchange is but an execution of a prior contract of exchange; it supposes such prior contract already established, and is the modus by which it is carried into execution, and not the contract itself."

Story on Bills, § 4. See also 2 Bl. Com., 466; Bayl. on Bills, 1; Chitty on Bills, 1; 1 H. Bl., 586; 1 B. and P, 291, 654; Selw. N. P., 285; Leigh's N. P., 335; 1 Bouv. Ins., n. 895; 1. Bouv. L. D., 176.)

Judge Story's definition exactly covers this case. One portion of the contract was to furnish the bank with funds in New York. The draft or bill of exchange was the medium or means of executing such portion of the contract. By the letter as well as the spirit of the statute, the bank had the power to contract to buy such bills, instead of the Secretary going to the bank, or the cashier coming to the Treasury Department, the latter sent a bank director, as the representative of the bank, to procure such bill. The bank had a right to purchase out of the State and through an agent.

Bank of Augusta vs. *Earle*, 13 Peters, 519; *Miller* vs. *Ewer*, 27 Maine R., 509; *The Carron Iron Co.* vs. *Maclaren*, 35 L. and E. R., p. 37.

The power to purchase necessarily implies the power to pay. Such payment may be made at the time and place of purchase, or at any other time and place. Although the statute requires circulating notes to be paid on demand at its banking house, there is no provision limiting the time, place, or mode of complying with its other obligations. The contract in question was one clearly authorized by the statute as a bill of exchange.

2. It was authorized to purchase evidences of debt.

The statute provides that the bank may buy, sell, and discount "all other evidences of debt." A bill of exchange is an evidence of debt. It carries with it the presumption that the drawee has contracted to accept and pay on account of the drawer. If no such contract in fact exists, it contains a contract on the part of the drawer, that, on proper notice, he will pay the same. The purchase of the draft, in this case, is justified under this provision, if it were not within the words of the other provision.

3. "This contract was authorized under the power to "transact all other business properly appertaining to banking."

The power here conferred is almost unlimited. It authorizes this bank to transact such business as banks usually transact. Instead of denying, as a matter of fact, that the contract in question was not included in proper banking business, and going to the jury upon it,

the department chose to present the point as a matter of law, and the court are now asked to determine what business properly appertains to banking.

Banks in this country properly, as well as customarily, transact, among other things, the following business:

1. Buy and sell gold and silver, and bills and notes of other banks and of individuals.
2. Discount notes and other evidences of debt.
3. Receive and pay out money as depositaries.
4. Collect debts for third persons at their counters or elsewhere.
5. Furnish letters of credit.
6. Buy, sell, and collect foreign and domestic bills of exchange.

Under this latter branch of business they buy bills upon a large portion of the cities of the world. They also sell bills upon the principal cities. In order to do the latter, they provide funds of credit at the points they expect to draw upon. Having funds at a point where not needed, they make arrangements to transfer them to another, where they expect to use them.

A very considerable portion of the profits of a bank arises from buying and selling exchange. A person at Columbus having funds in New York, and wishing to use them in New Orleans, or *vice versa*, would naturally apply to a bank there to make a transfer of them. This would be effected either by a direct agreement by the bank to transfer, or by its purchasing a draft upon the one place and selling one upon the other. The substance and legal effect would be the same, whichever mode should be adopted to accomplish the object. Buying and selling exchange upon foreign countries is precisely the same thing. Whether the bank actually transports money from one point to another to meet its engagements, or uses drafts, can make no difference in the nature and effect of the transaction. In New York, all banks are, or were, required by law to redeem their bills, upon certain terms, at a moneyed centre, (Albany or New York,) as well as at their counters. Systematic arrangements exist in New England to redeem, upon certain terms, in Boston. Contracts to supply funds at the redeeming agencies are of every day occurrence, and no one has doubted their legal validity. In the present case, the United States had funds in New York, and wished them in New Orleans. The bank undertook then to transfer to the latter point. Whether this should be done by actually transporting from the one point to the other, or the object should be accomplished by drafts, was unimportant. The bank, under the law, could perform its contract in either mode, and with the same propriety it could supply its redeeming agents in either manner. If a bank needs specie at its own counter, it resorts to either or both of these modes to accomplish its object. Its power to do so is unquestionable. The cashier makes these arrangements. When he cannot secure the object, he employs such assistants as he deems necessary. Banks everywhere employ agents and runners in collecting and distributing their funds, and in transacting their business, and these are selected by an act under the cashier, at least, as far as the public know; and their acts are as binding upon him as those of the highest officers.

II. The cashier, as to the plaintiffs, had power to represent the bank in such a contract.

This is not a question between the bank and its cashier, as principal and agent. The bank may, by its own express regulations, or by habitual known practice, impose upon its agents such restrictions as it may deem proper. These are matters between the principal and agent. But the question here is, what powers, as to third persons, can a cashier exercise? These will be found under four heads:

First. Such as are conferred in the charter, or in the act under which the bank is organized.

Second. Such as are found in its by-laws.

Third. Those expressly conferred by resolution or other definite corporate act.

Fourth. Such as are customarily exercised by such cashiers.

1. The customary powers exercised by cashiers are co-extensive with the business that is transacted by the bank.

The defendants waived going to the jury upon the question of custom, but so shaped their defence as to present it as one of law, which the court must dispose of with the lights it has, consisting of the common knowledge of mankind and judicial expositions.

All persons are bound to take notice of the statutes which have relations with their acts. In doing business with the bank, the plaintiffs are presumed to have adverted to and considered the question of the powers of the bank and its officers. In the statutes they ascertained that the powers of the bank extended to the business in which they were invited to engage; and finding that these powers was not committed to any specified agent, the natural inference was, that they were to be exercised by these officers who represented the bank in its ordinary transactions. The plaintiffs had a right to act upon this assumption. If the defendants had wished to avoid a third party's relying and acting upon this basis, and their being bound thereby, it was their duty to secure a limitation of the duties of their agents by legal enactment or otherwise, to affect with notice showing a restriction of their powers.

It would be impracticable for the bank to transact all its business and exercise the powers with which it is clothed, by the action of its board of directors alone; it must act through other agents. The defendants had other agents, and among them a cashier, whose office is recognised in the statute, without defining his duties.

He signs the notes issued by the bank; he wrote letters which were recorded in a letter book. In the absence of all express law on the subject, the plaintiffs had a right to presume that the cashier was clothed with authority to exercise all such powers as are not shown by law, or express notice to them, to have been devolved upon some other agent. If the defendants claim that his power was so limited by law as not to extend to transaction of all their business, it is for them to point out such law. If they insist that the plaintiffs had notice that the cashier's power was so limited as not to extend to their whole business, it devolves upon them to show it. But they have neither pointed to such a law or proved any such notice; neither appears in the case. It is therefore presumed that the cashier's

authority extended to all business which the bank could lawfully transact.

2. The plaintiffs had a right to act upon the supposition that the defendant's cashier could execute the usual duties devolved upon such officers, being those performed in this case.

It is a part of the common knowledge of the country, of which all persons and tribunals are bound to take notice, as they do of the common duties of judges and counsel, doctors and clergymen, and various other functionaries, that cashiers of banks are their general agents to transact all their business. People transact with the cashier all such business as banks usually perform, without demanding to know whether the directors have given him special instructions. If within the scope of the business authorized by its charter, it is presumed that he acts within his authority.

The books show to what this general authority extends.

Bouvier, (1 L. D., 224,) speaking of a cashier, says:

"1. An officer of a moneyed institution, who is entitled, by virtue of his office, to take care of the cash or money of the institution.

"2. The cashier of a bank is usually entrusted with all the funds of the bank, its notes, bills, and other choses in action, to be used from time to time, for the ordinary or extraordinary exigencies of the bank. He usually receives, directly or through the subordinate officers, all moneys and notes of the bank; delivers up all discounted notes and other securities, when they have been paid; draws checks to withdraw the funds of the bank where they have been deposited; and, as the executive officer of the bank, transacts much of the business of the institution. In general, the bank is bound by the acts of the cashier within the scope of his authority."

In *Wild* vs. *Bank of Passamaquoddy*, 3 Mason, 505, Story, J., said:

"The cashier of a bank is, *virtute officii*, generally entrusted with the notes, securities, and other funds of the bank, and is held out to the world by the bank as its general agent in the negotiation, management, and disposal of them. *Prima facie* he must be deemed to have authority to transfer and endorse negotiable securities held by the bank for its use and in its behalf. No special authority for this purpose is necessary to be proved. If a bank chooses to depart from this general course of business, it is entirely at liberty so to do; but in such case it is incumbent on the bank to show that it has interposed a restriction, and that such restriction is known to those with whom it is in the habit of doing business. In the present case, the cashier has, as cashier, endorsed the bill in behalf of the bank, and this is *prima facie* evidence of authority, it being within the ordinary duties performed by such an officer. If he was restricted in his authority, it is for the defendants to show it."

In *Minor* vs. *The Mechanics' Bank of Alexandria*, (1 Peters, pp. 46, 70,) this court said:

"The ordinary usage and practice of a bank, in the absence of counter proof, must be supposed to result from the regulations prescribed by the board of directors, to whom the charter and by-laws submit the general management of the bank and the control and

direction of its officers. It would be not only inconvenient, but perilous for the customers, or any other persons dealing with the bank, to transact their business with the officers upon any other presumption. The officers of the bank are held out to the public as having authority to act according to the general usage, practice, and course of business; and their acts, within the scope of such usage, practice, and course of business, would, in general, bind the bank in favor of third persons possessing no other knowledge."

In *The Bank of the United States* vs. *Dandridge*, (12 Wheat., pp. 64, 70,) this court, referring to presumptions applicable to private persons, said:

"The same presumptions are applicable, we think, to corporations. Persons acting publicly as officers of the corporation are to be presumed rightfully in office. Acts done by the corporation, which presupposes the existence of other acts to make them legally operative, are presumptive proof of the latter. * * If officers of the corporation openly exercise a power which presupposes a delegated authority for the purpose, and other corporate acts show that the corporation must have contemplated the legal existence of such authority, the acts of such officers will be deemed rightful, and the delegated authority will be presumed."

In *The State Bank* vs. *Cain*, (1 Breese, 45,) the supreme court of Illinois held, that when the law authorized the bank to perform a particular act, such act could be lawfully performed by the cashier, for whose acts the bank was held liable.

In *Fleckner* vs. *United States Bank*, (8 Wheat., pp. 338, 357,) this court said: "It (the charter) authorizes the president and directors to appoint a cashier and other officers of the bank, and gives the president and directors, or a majority of them, 'full power and authority to make all such rules and regulations for the government of the affairs and conducting the business of the said bank as shall not be contrary to this act of incorporation.' It contains no regulations as to the duties of the cashier, nor any express authority for the corporation to make by-laws. The whole business of the bank is confined entirely to the directors, and, of course, with them it would rest to fix the duties of the cashier or other officers. Whether they have, in fact, made any regulations on this subject, does not appear; but the acts of the cashier, done in the ordinary course of the business confided to such an officer, may well be deemed *prima facie* evidence that they fell within the scope of his duty."

Story on Agency, § 114, speaking of cashiers of banks, says: "It may be stated as a general proposition, that the officers of the bank are held out to the public as having authority to act according to the general usage, practice, and course of business of such institutions, and that their acts, within the scope of such usage, practice, and course of business, bind the bank in favor of third persons, having no knowledge to the contrary. The cashier of a bank is usually entrusted with all the funds of a bank, in cash, notes, bills, and other choses in action, to be used from time to time for the ordinary and extraordinary exigencies of the bank. He is accustomed to receive directly, or through the subordinate officers, all moneys and notes of

the bank ; to deliver up all discounted notes and other securities and property, when payment of the dues for which they are given have been made ; and to draw checks, from time to time, for money wherever the bank has deposits and pecuniary funds. In short, he is considered the executive officer, through whom and by whom the whole moneyed transactions of the banks, in paying and receiving debts and discharging and transferring securities, are to be conducted. It does not seem, therefore, too much to infer, in the absence of all positive and known restrictions, that he possesses the incidental authority, and, indeed, that it is his duty to apply the negotiable funds, as well as the moneyed capital of the bank, to the discharge of its debts and obligations."

Although the proof in this case states that the letter written by the cashier was "without the knowledge or sanction of the directory of said bank before, at the time, or subsequent thereto," there is no evidence to show that the transaction itself was not within the general authority conferred upon him. The record does not show that the defendants offered any proof upon that point. Under the above cited cases, this authority is presumed until disproved by the defendants and notice to the plaintiffs.

The ordinary duties of a cashier clearly extend to purchasing funds at one point and selling them at another. New York is the moneyed centre of the United States, and funds there usually bear a premium at all other points, and especially at those which find a market for their productions at other points. This bank could accumulate funds in New Orleans in the usual course of business at par, if not below, through its own circulation, and could sell its drafts upon New York at a premium. This was the basis of the transaction in this case, and was precisely that description of business which banks entrust to the management of their cashiers. In order to its successful management, agents, either traveling or local, must be employed from time to time. These agents are sometimes banks and brokers, and often individuals in whom the cashier has confidence, as may be most convenient. That this is the general course of business, must be known to the court, as a part of the common knowledge of the world ; and having such knowledge, it must hold that the cashier, in this case, had full power and authority to enter into the arrangement for purchasing said draft on New York and agreeing to pay in the city of New Orleans. It follows, that said agreement was valid and binding upon the bank. If the cashier acted contrary to the wishes of the bank, and against its interests, it has its remedy, if at all, against him and his sureties. In no event can the innocent plaintiffs be made to lose their money entrusted to him in the ordinary course of business.

C. CUSHING,
Attorney General.